

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES AND
WINDSWEPT LAND AND LIVESTOCK COMPANY,
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER

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THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered into by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, made this ____ day of _____, 2004, pursuant to the applicable authority granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, including, but not limited to, Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, and WINDSWEPT LAND AND LIVESTOCK COMPANY, hereinafter referred to as the Contractor, a partnership, acting pursuant to Sections 12003 and 12004 of the California Water Code, with its principal place of business in California;

WITNESSETH, that:

EXPLANATORY RECITALS

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[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, for multiple purposes pursuant to its statutory authority; and

[2nd] WHEREAS, the Contractor has rights to divert, is diverting, and will continue to divert for reasonable beneficial use, water from the natural flow of the Sacramento River and tributaries thereto, that would have been flowing therein if the Central Valley Project were not in existence;

[3rd] WHEREAS, the construction and operation of the integrated and coordinated Central Valley Project has changed and will further change the regimen of the Sacramento, American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from unregulated flow to regulated flow; and

[4th] WHEREAS, the United States has rights to divert, is diverting, and will continue to divert waters from said Rivers and said Delta in connection with the operation of said Central Valley Project; and

[5th] WHEREAS, the Contractor and the United States had a dispute over the respective rights of the parties to divert and use water from the regulated flow of the Sacramento River which threatened to result in litigation, and as a means to settle that dispute entered into Contract No. 14-06-200-2045A, as amended, hereinafter referred to as the Existing Contract, which established terms for the delivery to the Contractor of Central Valley Project Water, and the quantities of Base Supply the United States and the Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant to such contract; and

[6th] WHEREAS, the United States and the Contractor disagree with respect to the authority of the United States to change the quantities of Base Supply and/or Project Water

1 specified as available for diversion in this Settlement Contract from the quantities specified in
2 the Existing Contract, and other issues related thereto. That dispute was the subject of litigation
3 in a lawsuit entitled *Glenn-Colusa Irrigation District, et al. v. United States, et al.* [Civ. No. S-
4 01-1816 GEB/JFM (E.D. Cal.)], but that litigation was dismissed, without prejudice, pursuant to
5 a stipulation of dismissal filed by the parties thereto on August 29, 2002. Notwithstanding that
6 dismissal, the Contractor and the United States enter into this Settlement Contract to renew the
7 Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and
8 the laws of the State of California; and

9 [7th] WHEREAS, to assure the Contractor of the enjoyment and use of the regulated
10 flow of the said Rivers and the Delta, and to provide for the economical operation of the Central
11 Valley Project by, and the reimbursement to, the United States for expenditures made for said
12 Project.

13 NOW, THEREFORE, in consideration of the performance of the herein contained
14 provisions, conditions, and covenants, it is agreed as follows:

15 DEFINITIONS

16 1. When used herein, unless otherwise expressed or incompatible with the intent
17 hereof, the term:

18 (a) “Base Supply” shall mean the quantity of Surface Water established in
19 Articles 3 and 5 which may be diverted by the Contractor from the Sacramento River each month
20 during the period April through October of each Year without payment to the United States for
21 such quantities diverted;

22 (b) “Basin-Wide Water Management Plan” shall mean the mutually agreeable
23 Sacramento River Basinwide Water Management Plan, dated _____, developed by

1 Glenn-Colusa Irrigation District, Maxwell Irrigation District, Natomas Central Mutual Water
2 Company, Pelger Mutual Water Company, Princeton-Codora-Glenn Irrigation District, Provident
3 Irrigation District, Reclamation District 108, Sutter Mutual Water Company, Anderson-
4 Cottonwood Irrigation District, Meridian Farms Water Company, Reclamation District 1004, and
5 the U.S. Bureau of Reclamation;

6 (c) “Charges” shall mean the payments for Project Water that the Contractor
7 is required to pay to the United States in addition to the “Rates” specified in this Settlement
8 Contract. The Contracting Officer will, on an annual basis, determine the extent of these
9 Charges. The type and amount of each Charge shall be specified in Exhibit D;

10 (d) “Contract Total” shall mean the sum of the Base Supply and Project Water
11 available for diversion by the Contractor for the period April 1 through October 31;

12 (e) “Critical Year” shall mean any Year in which either of the following
13 eventualities exists:

14 (1) The forecasted full natural inflow to Shasta Lake for the current
15 Water Year, as such forecast is made by the United States on or before February 15 and reviewed
16 as frequently thereafter as conditions and information warrant, is equal to or less than 3.2 million
17 acre-feet; or

18 (2) The total accumulated actual deficiencies below 4 million acre-feet
19 in the immediately prior Water Year or series of successive prior Water Years each of which had
20 inflows of less than 4 million acre-feet, together with the forecasted deficiency for the current
21 Water Year, exceed 800,000 acre-feet.

22 For the purpose of determining a Critical Year, the computation of inflow to
23 Shasta Lake shall be performed in a manner that considers the extent of upstream development

1 above Shasta Lake during the year in question, and shall be used as the full natural flow to
2 Shasta Lake. In the event that major construction has occurred or occurs above Shasta Lake after
3 September 1, 1963, and which has materially altered or alters the regimen of the stream systems
4 contributing to Shasta Lake, the computed inflow to Shasta Lake used to define a Critical Year
5 will be adjusted to eliminate the effect of such material alterations. After consultation with the
6 State of California, the National Weather Service, and other recognized forecasting agencies, the
7 Contracting Officer will select the forecast to be used and will make the details of it available to
8 the Contractor. The same forecasts used by the United States for the operation of the Project
9 shall be used to make the forecasts hereunder;

10 (f) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
11 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

12 (g) "Eligible Lands" shall mean all lands to which Project Water may be
13 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
14 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

15 (h) "Excess Lands" shall mean all lands in excess of the limitations contained
16 in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
17 Reclamation law;

18 (i) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3)
19 or 202(3) of the RRA, whichever is applicable;

20 (j) "Ineligible Lands" shall mean all lands to which Project Water may not be
21 delivered in accordance with Section 204 of the RRA;

22 (k) "Landholder" shall mean a party that directly or indirectly owns or leases
23 nonexempt land, as provided in 43 CFR 426.2;

1 (l) “Project” shall mean the Central Valley Project owned by the United
2 States and managed by the Department of the Interior, Bureau of Reclamation;

3 (m) “Project Water” shall mean all Surface Water diverted or scheduled to be
4 diverted each month during the period April through October of each Year by the Contractor
5 from the Sacramento River which is in excess of the Base Supply. The United States recognizes
6 the right of the Contractor to make arrangements for acquisition of water from projects of others
7 than the United States for delivery through the Sacramento River and tributaries subject to
8 written agreement between Contractor and the United States as to identification of such water
9 which water when so identified shall not be deemed Project Water under this Settlement
10 Contract;

11 (n) “Rates” shall mean the payments for Project Water determined annually
12 by the Contracting Officer in accordance with the then current applicable water ratesetting
13 policies for the Project, as described in subdivision (a) of Article 8 of this Settlement Contract;

14 (o) “Secretary” or “Contracting Officer” shall mean the Secretary of the
15 Interior, a duly appointed successor, or an authorized representative acting pursuant to any
16 authority of the Secretary and through any agency of the Department of the Interior;

17 (p) “Surface Water” shall mean only those waters that are considered as
18 surface water under California law;

19 (q) “Water Year” shall mean the period commencing with October 1 of 1 year
20 and extending through September 30 of the next; and

21 (r) “Year” shall mean a calendar year.

1 at the locations shown in Exhibit A, for beneficial use within the area delineated on Exhibit B,
2 (both Exhibits are attached hereto and made a part hereof), the Contract Total designated in
3 Exhibit A, or any revision thereof, in accordance with the monthly operating schedule required
4 by Article 3(c) of this Settlement Contract. The quantity of any water diverted under this
5 Settlement Contract from the Sacramento River, during the period April through October, for use
6 on any lands delineated on Exhibit B, by the owner of such lands or otherwise shall constitute a
7 part of the Contract Total as shown on Exhibit A and shall be subject to all the provisions of this
8 Settlement Contract relating to such Contract Total as if such diversion were made by the
9 Contractor.

10 (b) The Contractor may have acquired rights to divert water from the
11 Sacramento River during the period April through October, that were obtained after the date of
12 execution of the Existing Contract, or the Contractor may acquire such rights in the future. All
13 diversions made from the Sacramento River, pursuant to such rights, during the period April
14 through October, shall not be considered a part of the quantity of Base Supply and Project Water
15 specified in Exhibit A; Provided, that the quantities diverted pursuant to the above rights shall be
16 identified on the schedule submitted pursuant to Article 3(c) below, and shall not be substituted
17 for any Base Supply or Project Water; Provided, further, that any such identified quantities of
18 other acquired rights may be diverted by the Contractor before incurring any fee pursuant to
19 Article 3(c)(1), below.

20 (c) Before April 1 and before the first day of each month thereafter when a
21 revision is needed, the Contractor shall submit a written schedule to the Contracting Officer
22 indicating the Contract Total to be diverted by the Contractor during each month under this
23 Settlement Contract. The United States shall furnish water to the Contractor in accordance with

1 the monthly operating schedule or any revisions thereof. However, the United States recognizes
2 the need of the Contractor to change from time to time its monthly diversions of water from the
3 quantities shown in Exhibit A; the Contractor may make such changes, provided:

4 (1) that for the quantity of Base Supply diverted in excess of the
5 monthly quantity shown in Exhibit A, and as may be reduced in accordance with Article 5(a),
6 during June, July, August, September, or October of any Water Year, the Contractor shall be
7 charged a rescheduling fee equal to 50 percent of the sum of the storage operations and
8 maintenance rate and the storage capital rate components of the Project ratesetting policy.

9 (2) that in no event shall the total quantity scheduled for diversion by
10 the Contractor from the Sacramento River:

11 (i) During the period April through October exceed the
12 aggregate of the Contract Total for that period shown in Exhibit A or any revision
13 thereof;

14 (ii) During the period July through September exceed the
15 aggregate of the Contract Total for that period shown in Exhibit A or any revision
16 thereof.

17 (d) In the event conditions warrant, the Contracting Officer reserves the right
18 to require the Contractor to submit, at least 72 hours prior to the beginning of each weekly
19 period, its estimate of daily diversion requirements for each such period from the Sacramento
20 River: Provided, however, that changes during any such period may be made upon the giving of
21 72 hours' notice thereof to the Contracting Officer.

22 (e) No sale, transfer, exchange, or other disposal of any of the Contract Total
23 designated in Exhibit A or the right to the use thereof for use on land other than that shown on

1 Exhibit B shall be made by the Contractor without first obtaining the written consent of the
2 Contracting Officer. Such consent will not be unreasonably withheld and a decision will be
3 rendered in a timely manner. For short-term actions that will occur within 1 year or less, the
4 decision will be rendered within 30 days after receipt of a complete written proposal. For long-
5 term actions that will occur in a period longer than 1 year, the decision will be rendered within
6 90 days after receipt of a complete written proposal. For a proposal to be deemed complete by
7 the Contracting Officer, it must comply with all provisions required by State and Federal law,
8 including information sufficient to enable the Contracting Officer to comply with the National
9 Environmental Policy Act, the Endangered Species Act, and applicable rules or regulations then
10 in effect; Provided that, such consent does not authorize the use of Federal facilities to facilitate
11 or effectuate the sale, transfer, exchange, or other disposal of Base Supply. Such use of Federal
12 facilities will be the subject of a separate agreement to be entered into between the Contractor
13 and Reclamation.

14 (f) For the purpose of determining whether Section 3405(a)(1)(M) of the
15 CVPIA applies to the Contractor as a transferor or transferee of Project Water, the Contracting
16 Officer acknowledges that the Contractor is within a county, watershed, or other area of origin,
17 as those terms are utilized under California law.

18 (g) Nothing herein contained shall prevent the Contractor from diverting
19 water during the months of November through March for beneficial use on the land shown on
20 Exhibit B or elsewhere to the extent authorized under the laws of the State of California.

21 (h) The United States assumes no responsibility for and neither it nor its
22 officers, agents, or employees shall have any liability for or on account of:

23 (1) The quality of water to be diverted by the Contractor;

1 of the Critical Year occurs and, each monthly quantity of said period shall be reduced by
2 25 percent.

3 (b) The amount of any overpayment by the Contractor shall, at its option, be
4 refunded or credited upon amounts to become due to the United States from the Contractor under
5 the provisions hereof in the ensuing Year. To the extent of such deficiency such adjustment of
6 overpayment shall constitute the sole remedy of the Contractor.

7 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

8 6. The Contractor and United States desire to work together to maximize the
9 reasonable beneficial use of water for their mutual benefit. As a consequence, the United States
10 and the Contractor will work in partnership and with others within the Sacramento Valley,
11 including other Contractors, to facilitate the better integration within the Sacramento Valley of
12 all water supplies including, but not limited to, the better management and integration of surface
13 water and groundwater, the development and better utilization of surface water storage, the
14 effective utilization of waste, seepage and return flow water, and other operational and
15 management options that may be identified in the future.

16 USE OF WATER FURNISHED TO CONTRACTOR

17 7. (a) Project Water furnished to the Contractor pursuant to this Settlement
18 Contract shall not be delivered or furnished by the Contractor for any purposes other than
19 agricultural purposes without the written consent of the Contracting Officer. For purposes of this
20 Settlement Contract, “agricultural purposes” includes, but is not restricted to, the irrigation of
21 crops, the watering of livestock, incidental domestic use including related landscape irrigation, or
22 underground water replenishment.

1 (b) Payments to be made by the Contractor to the United States under this
2 Settlement Contract may be paid from any revenues available to the Contractor.

3 (1) All revenues received by the United States from the Contractor
4 relating to the delivery of non-Project Water through Project facilities shall be allocated and
5 applied in accordance with Federal Reclamation law and the associated rules or regulations, and
6 the then current Project ratesetting policies for irrigation water.

7 (c) The parties acknowledge and agree that the efficient administration of this
8 Settlement Contract is their mutual goal. Recognizing that experience has demonstrated that
9 mechanisms, policies, and procedures used for making and allocating payments, other than those
10 set forth in this Article may be in the mutual best interest of the parties, it is expressly agreed that
11 the parties may enter into agreements to modify the mechanisms, policies, and procedures for
12 any of those purposes while this Settlement Contract is in effect without amendment of this
13 Settlement Contract.

14 (d) Each payment to be made pursuant to subdivision (a) of this Article shall
15 be made at the office of the Bureau of Reclamation, Mid-Pacific Region, File No. 11546, P.O.
16 Box 6000, San Francisco, California 94160-1546, or at such other place as the United States
17 may designate in a written notice to the said Contractor. Payments shall be made by cash
18 transaction, wire, or any other mechanism as may be agreed to in writing by the Contractor and
19 the Contracting Officer. In the event there should be a default in the payment of the amount due,
20 the delinquent payment provisions of Article 13 shall apply. The Contractor shall not be relieved
21 of the whole or any part of its said obligation by, on account of, or notwithstanding, as the case
22 may be, the default in payment to it by any water user of assessments, tolls, or other charges
23 levied by or owing to said Contractor.

1 failure to reach agreement on an amendment within 60 days of the end of mediation will cause
2 the immediate termination of this Settlement Contract.

3 (c) In the event that the California State Water Resources Control Board or a
4 court of competent jurisdiction issues a final decision or order modifying the terms and
5 conditions of the water rights of either party to this Settlement Contract in order to impose Bay-
6 Delta water quality obligations, the Contractor and the United States shall promptly meet to
7 determine whether or not to modify any of the terms of this Settlement Contract to comply with
8 the final decision or order, including, but not limited to, the applicability of the rescheduling
9 charge in Article 3(c)(1) of this Settlement Contract. If within 60 days of the date of the issuance
10 of the final decision or order the parties are not able to reach agreement regarding either the need
11 to modify this Settlement Contract or the manner in which this Settlement Contract is to be
12 modified, the parties shall promptly retain a neutral mediator, experienced in resolving water
13 right disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be
14 shared equally. In the event that either of the parties to this Settlement Contract determines that
15 the parties will not be able to develop mutually-agreeable modification(s) to this Settlement
16 Contract even with the assistance of a mediator, either of the parties to this Settlement Contract
17 may attempt to resolve the impasse by seeking appropriate judicial relief including, but not
18 limited to, filing a general adjudication of the rights to the use of water in the Sacramento River
19 system. The foregoing provisions of this sub-article shall only apply to the incremental
20 obligations contained within a final decision or order of the State Water Resources Control
21 Board that reflects a modification to the obligations imposed in State Water Resources Control
22 Board Revised Water Rights Decision 1641 dated March 15, 2000, and its associated 1995 Water

1 Quality Control Plan which, taken together, will be considered the baseline for the application of
2 the provisions of this sub-article.

3 (d) In the event this Settlement Contract terminates, the rights of the parties to
4 thereafter divert and use water shall exist as if this Settlement Contract had not been entered into;
5 and the fact that as a compromise settlement of a controversy as to the respective rights of the
6 parties to divert and use water and the yield of such rights during the term hereof, this Settlement
7 Contract places a limit on the Contract Total to be diverted annually by the Contractor during the
8 Settlement Contract term and segregates it into Base Supply and Project Water shall not
9 jeopardize the rights or position of either party with respect to its water rights or the yield thereof
10 at all times after the Settlement Contract terminates. It is further agreed that the Contractor at all
11 times will first use water to the use of which it is entitled by virtue of its own water rights, and
12 neither the provisions of this Settlement Contract, action taken thereunder, nor payments made
13 thereunder to the United States by the Contractor shall be construed as an admission that any part
14 of the water used by the Contractor during the term of this Settlement Contract was in fact water
15 to which it would not have been entitled under water rights owned by it nor shall receipt of
16 payments thereunder by the United States from the Contractor be construed as an admission that
17 any part of the water used by the Contractor during the term of this Settlement Contract was in
18 fact water to which it would have been entitled under water rights owned by it.

19 MEASUREMENT OF WATER

20 10. (a) All water diverted by the Contractor from the Sacramento River will be
21 diverted at the existing point or points of diversion shown on Exhibit A or at such other points as
22 may be mutually agreed upon in writing by the Contracting Officer and the Contractor.

1 (b) All water diverted from the Sacramento River pursuant to this Settlement
2 Contract will be measured or caused to be measured by the United States at each point of
3 diversion with existing equipment or equipment to be installed, operated, and maintained by the
4 United States, and/or others, under contract with and at the option of the United States. The
5 equipment and methods used to make such measurement shall be in accordance with sound
6 engineering practices. Upon request of the Contractor, the accuracy of such measurements will
7 be investigated by the Contracting Officer and any errors appearing therein will be corrected.

8 (c) The right of ingress to and egress from all points of diversion is hereby
9 granted to all authorized employees of the United States. The Contractor also hereby grants to
10 the United States the right to install, operate, maintain, and replace such equipment on diversion
11 or carriage facilities at each point of diversion as the Contracting Officer deems necessary.

12 (d) The Contractor shall not modify, alter, remove, or replace diversion
13 facilities or do any other act which would alter the effectiveness or accuracy of the measuring
14 equipment installed by the United States or its representatives unless and until the Contracting
15 Officer has been notified with due diligence and has been given an opportunity to modify such
16 measuring equipment in such manner as may be necessary or appropriate. In the event of an
17 emergency the Contractor shall notify the United States within a reasonable time thereafter as to
18 the existence of the emergency and the nature and extent of such modification, alteration,
19 removal, or replacement of diversion facilities.

20 (e) The Contractor shall pay the United States for the costs to repair, relocate,
21 or replace measurement equipment when the Contractor modifies, alters, removes, or replaces
22 diversion or carriage facilities.

1 (f) Contractor and Contracting Officer shall develop a mutually agreeable
2 surface water delivery water measurement program which shall be implemented by the
3 Contractor, and such measurement program shall be consistent with the conservation and
4 efficiency criteria for evaluating water conservation plans as provided in Article 29(a).

5 (g) All new surface water delivery systems installed within the lands
6 delineated on Exhibit B after the effective date of this Settlement Contract shall also comply with
7 the measurement provisions described in this Article.

8 RULES AND REGULATIONS

9 11. The parties agree that the delivery of Project Water for irrigation use or use of
10 Federal facilities pursuant to this Settlement Contract is subject to Federal Reclamation law,
11 including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), as
12 amended and supplemented, and the rules and regulations promulgated by the Secretary of the
13 Interior under Federal Reclamation law.

14 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

15 12. (a) The obligation of the Contractor to pay the United States as provided in
16 this Settlement Contract is a general obligation of the Contractor notwithstanding the manner in
17 which the obligation may be distributed among the Contractor's water users and notwithstanding
18 the default of individual water users in their obligations to the Contractor.

19 (b) The payment of Charges becoming due hereunder is a condition precedent
20 to receiving benefits under this Settlement Contract. The United States shall not make water
21 available to the Contractor through Project facilities during any period in which the Contractor
22 may be in arrears in the advance payment of water Rates due the United States. The Contractor
23 shall not furnish water made available pursuant to this Settlement Contract for lands or parties
24 which are in arrears in the advance payment of water rates levied or established by the
25 Contractor.

26 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
27 obligation to require advance payment for water Rates which it levies.

EQUAL OPPORTUNITY

16. During the performance of this Settlement Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Settlement Contract or with any of the said rules, regulations, or orders, this Settlement Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
2 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
3 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
4 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
5 action with respect to any subcontract or purchase order as may be directed by the Secretary of
6 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
7 Provided, however, that in the event the Contractor becomes involved in, or is threatened with,
8 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
9 the United States to enter into such litigation to protect the interests of the United States.

10 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

11 17. Omitted.

12 MINGLING OF CONTRACTOR'S PROJECT AND NON-PROJECT WATER

13 18. (a) Project Water must of necessity be transported by the Contractor to its
14 water users by means of the same works and channels used for the transport of its non-Project
15 Water including Base Supply. Notwithstanding such mingling of water, the provisions of Article
16 11 hereof shall be applicable only to Project Water, and such mingling of water shall not in any
17 manner subject to the provisions of Article 11 hereof the Contractor's non-Project Water
18 including Base Supply.

19 (b) If required in accordance with subdivision (c) of this Article, the
20 Contractor shall install and maintain such measuring equipment and distribution facilities and
21 maintain such records as may be necessary to determine the amounts of water delivered to
22 Excess Lands served by the Contractor. The Contractor shall not within any month deliver to
23 Ineligible Lands water in excess of the non-Project Water, including Base Supply, for that
24 month. The Contracting Officer or authorized representative shall have the right at all
25 reasonable times to inspect such records and measuring equipment.

26 (c) The Contractor will not be considered in violation of the requirement that
27 Project Water be delivered only to Eligible Lands during any month of the irrigation season that

1 the water requirement for beneficial use on Eligible Lands for that month is equal to or in excess
2 of the Project Water for that month as shown on Exhibit A or any revision thereof pursuant to
3 subdivision (c) of Article 3. The water requirement for beneficial use on Eligible Lands will be
4 determined by multiplying:

5 (1) the number of irrigable acres of the particular types of crops grown
6 in that year on the acreage designated as eligible by

7 (2) the Unit Duties as set forth in Exhibit C attached hereto and made
8 a part hereof, or by such other Unit Duties mutually agreed upon by the Contractor and the
9 Contracting Officer. In order to make the computation of the water requirement for Eligible
10 Lands, on April 1 of each Year and concurrently with its order for water for the irrigation season,
11 the Contractor shall designate the acreage of and type of crops to be grown on its Eligible Lands
12 that irrigation season. During any month the water requirement as above determined for crops
13 growing on Eligible Lands during such month is equal to or in excess of the Project Water for
14 that month as provided herein the Contractor shall not be required to measure the water delivered
15 to Excess Lands. Any month the said water requirement is less than the amount of Project Water
16 as provided herein, the Contractor will be required to measure water delivered to excess land in
17 accordance with subdivision (b) hereof.

18 BOOKS, RECORDS, AND REPORTS

19 19. The Contractor shall establish and maintain accounts and other books and records
20 pertaining to administration of the terms and conditions of this Settlement Contract, including:
21 the Contractor's financial transactions, water supply data, and Project land and right-of-way
22 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
23 data; and other matters that the Contracting Officer may require. Reports thereon shall be
24 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
25 Officer may require. Subject to applicable Federal laws and regulations, each party to this
26 Settlement Contract shall have the right during office hours to examine and make copies of each
27 other's books and official records relating to matters covered by this Settlement Contract.

1 OFFICIALS NOT TO BENEFIT

2 24. (a) No Member of or Delegate to Congress, Resident Commissioner, or
3 official of the Contractor shall benefit from this Settlement Contract other than as a water user or
4 landowner in the same manner as other water users or landowners.

5 (b) No officer or member of the governing board of the Contractor shall
6 receive any benefit that may arise by reason of this Settlement Contract other than as a
7 landowner within the Contractor's service area and in the same manner as other landowners
8 within the said service area.

9 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

10 25. The expenditure or advance of any money or the performance of any obligation of
11 the United States under this Settlement Contract shall be contingent upon appropriation or
12 allotment of funds. Absence of appropriation or allotment of funds shall not relieve the
13 Contractor from any obligations under this Settlement Contract. No liability shall accrue to the
14 United States in case funds are not appropriated or allotted.

15 CONFIRMATION OF SETTLEMENT CONTRACT

16 26. The Contractor, after the execution of this Settlement Contract, shall promptly
17 seek to secure a decree of a court of competent jurisdiction of the State of California, if
18 appropriate, confirming the execution of this Settlement Contract. The Contractor shall furnish
19 the United States a certified copy of the final decree, the validation proceedings, and all pertinent
20 supporting records of the court approving and confirming this Settlement Contract, and
21 decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This Settlement
22 Contract shall not be binding on the United States until such final decree has been secured.

23 UNAVOIDABLE GROUNDWATER PERCOLATION

24 27. To the extent applicable, the Contractor shall not be deemed to have delivered
25 Project Water to Excess Lands or Ineligible Lands if such lands are irrigated with groundwater
26 that reaches the underground strata as an unavoidable result of the delivery of Project Water by
27 the Contractor to Eligible Lands.

28 PRIVACY ACT COMPLIANCE

29 28. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
30 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
31 seq.) in maintaining Landholder acreage certification and reporting records, required to be
32 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation
33 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1 (b) With respect to the application and administration of the criminal penalty
2 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees
3 responsible for maintaining the certification and reporting records referenced in (a) above are
4 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

5 (c) The Contracting Officer or a designated representative shall provide the
6 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
7 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--
8 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of
9 information contained in the Landholder's certification and reporting records.

10 (d) The Contracting Officer shall designate a full-time employee of the
11 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
12 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
13 Contractor is authorized to grant requests by individuals for access to their own records.

14 (e) The Contractor shall forward promptly to the System Manager each
15 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
16 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
17 Manager with information and records necessary to prepare an appropriate response to the
18 requester. These requirements do not apply to individuals seeking access to their own
19 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the
20 requester elects to cite the Privacy Act as a basis for the request.

21 WATER CONSERVATION

22 29. (a) Prior to the diversion of Project Water, the Contractor shall be
23 implementing an effective water conservation and efficiency program based on the Basin-Wide
24 Water Management Plan and/or Contractor's water conservation plan that has been determined
25 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water
26 conservation plans established under Federal law. The water conservation and efficiency
27 program shall contain definite water conservation objectives, appropriate economically feasible
28 water conservation measures, and time schedules for meeting those objectives. Continued
29 diversion of Project Water pursuant to this Settlement Contract shall be contingent upon the
30 Contractor's continued implementation of such water conservation program. In the event the
31 Contractor's water conservation plan or any revised water conservation plan completed pursuant

1 to subdivision (c) of Article 29 of this Settlement Contract have not yet been determined by the
2 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer
3 determines are beyond the control of the Contractor, Project Water deliveries shall be made
4 under this Settlement Contract so long as the Contractor diligently works with the Contracting
5 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
6 immediately begins implementing its water conservation and efficiency program in accordance
7 with the time schedules therein.

8 (b) The Contractor shall submit to the Contracting Officer a report on the
9 status of its implementation of the water conservation plan on the reporting dates specified in the
10 then existing conservation and efficiency criteria established under Federal law.

11 (c) At 5-year intervals, the Contractor shall revise its water conservation plan
12 to reflect the then current conservation and efficiency criteria for evaluating water conservation
13 plans established under Federal law and submit such revised water management plan to the
14 Contracting Officer for review and evaluation. The Contracting Officer will then determine if
15 the water conservation plan meets Reclamation's then current conservation and efficiency
16 criteria for evaluating water conservation plans established under Federal law.

17 (d) If the Contractor is engaged in direct ground-water recharge, such activity
18 shall be described in the Contractor's water conservation plan.

19 (e) In order to provide incentives for water conservation, the Contractor may
20 reduce the amount of Project Water for which payment is required under Article 8(a) in
21 accordance with the provisions of this Article 29(e).

22 (1) On or before February 15 of any Water Year, the Contractor may
23 file with Reclamation an offer to reduce Project Water use, hereinafter referred to as Offer. The

1 Offer shall specify the maximum quantity of Project Water to be diverted by the Contractor for
2 each month that Project Water is available for that Water Year under this Settlement Contract.
3 The Contracting Officer shall provide the Contractor with a decision, in writing, to the Offer on
4 or before March 15 of that Water Year. The dates specified in this Article 29(e)(1) can be
5 changed if mutually agreed to, in writing, by the Contractor and Contracting Officer.

6 (2) If Reclamation accepts the Offer, the Contractor's payment
7 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project Water to be
8 diverted by the Contractor as specified in the Offer. The Contractor shall not divert Project
9 Water in excess of the quantities set forth in the Offer: Provided, however, if the Contractor's
10 diversions of Project Water exceed the quantities set forth in the Offer, the Contractor shall pay
11 to Reclamation the applicable Rates and Charges plus an amount equal to the applicable Rates
12 and Charges, unadjusted for ability to pay, for each acre-foot of Project Water diverted in excess
13 of the quantities set forth in the Offer.

14 (3) If Reclamation decides not to accept the Offer, the Contractor's
15 payment obligation will remain as specified in Article 8(a)(1).

16 (4) The provisions of this Article 29(e) shall be in addition to and shall
17 not affect the provisions of Article 3(e) pertaining to the sale, transfer, exchange, or other
18 disposal of the Contract Total designated in Exhibit A.

19 OPINIONS AND DETERMINATIONS

20 30. (a) Where the terms of this Settlement Contract provide for actions to be
21 based upon the opinion or determination of either party to this Settlement Contract, said terms
22 shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or
23 unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of

1 this Settlement Contract, expressly reserve the right to seek relief from and appropriate
2 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each
3 opinion or determination by either party shall be provided in a timely manner. Nothing in
4 subdivision (a) of Article 30 of this Settlement Contract is intended to or shall affect or alter the
5 standard of judicial review applicable under Federal law to any opinion or determination
6 implementing a specific provision of Federal law embodied in statute or regulation.

7 (b) The Contracting Officer shall have the right to make determinations
8 necessary to administer this Settlement Contract that are consistent with the provisions of this
9 Settlement Contract, the laws of the United States and of the State of California, and the rules
10 and regulations promulgated by the Secretary of the Interior. Such determinations shall be made
11 in consultation with the Contractor to the extent reasonably practicable.

12 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

13 31. (a) In addition to all other payments to be made by the Contractor pursuant to
14 this Settlement Contract, the Contractor shall pay to the United States, within 60 days after
15 receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for
16 such specific items of direct cost incurred by the United States for work requested by the
17 Contractor associated with this Settlement Contract plus indirect costs in accordance with
18 applicable Bureau of Reclamation policies and procedures. All such amounts referred to in this
19 Article shall not exceed the amount agreed to in writing in advance by the Contractor. This
20 Article shall not apply to costs for routine contract administration.

21 (b) All advances for miscellaneous costs incurred for work requested by the
22 Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the
23 actual costs when the work has been completed. If the advances exceed the actual costs incurred,

1 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
2 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this
3 Settlement Contract.

4 WAIVER OF DEFAULT

5 32. The waiver by either party to this Settlement Contract as to any default shall not
6 be construed as a waiver of any other default or as authority of the other party to continue such
7 default or to make, do, or perform, or not to make, do, or perform, as the case may be, any act or
8 thing which would constitute a default.

9 CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

10 33. (a) The rights and obligations of the Contractor may be transferred in
11 connection with the transfer of title to the land or any portion thereof delineated on Exhibit B on
12 the following terms and conditions:

13 (1) A voluntary inter vivos transfer may be made, upon mutual
14 agreement of the United States and the Contractor, to a person eligible to hold title to the land as
15 a nonexcess landowner:

16 (2) A voluntary inter vivos transfer may be made to a person ineligible
17 to hold title to the land as a nonexcess landowner provided that no Project Water may thereafter
18 be used on Excess Lands and the assignee shall not be privileged to obtain such use of Project
19 Water on Excess Lands.

20 (3) In the event the title of the Contractor to such land, or any portion
21 thereof, is transferred by operation of law, such as by conveyance in satisfaction of a mortgage,
22 by inheritance, or by devise, the rights and obligations of the Contractor shall pass with the title
23 and the land shall be subject to provisions of Reclamation law pertaining to such transfers. Any

1 transfer of the rights and obligations of this Settlement Contract by the person acquiring title by
2 operation of law shall be in accordance with provisions of subsection (1) or (2) above.

3 (b) The Contractor shall notify the Contracting Officer in writing of any
4 proposed transfer of this Settlement Contract. In addition, in the case of a partial assignment the
5 Contractor shall:

6 (1) Designate the proportionate quantities of Base Supply and Project
7 Water which it desires to assign;

8 (2) Furnish the United States with a copy of the deed transferring title.

9 (c) No transfer of this Settlement Contract shall be effective unless and until
10 approved by the Contracting Officer, and, if approved, shall be effective from the date of such
11 approval.

12 (d) Upon mutual agreement between the United States and the Contractor, this
13 Settlement Contract or a portion thereof may be terminated and the new landowner will have the
14 privilege of entering into a Settlement Contract for water service for a proportionate share of the
15 Contract Total provided he is duly qualified to receive water for such land.

16 TERMINATION

17 34. This Settlement Contract will terminate upon mutual agreement of the parties
18 prior to the end of the term or any renewal thereof.

1 IN WITNESS WHEREOF, the parties hereto have executed this Settlement
2 Contract as of the day and year first hereinabove written.

3 THE UNITED STATES OF AMERICA

4 By: _____
5 Regional Director, Mid-Pacific Region
6 Bureau of Reclamation

7 (SEAL)

8 WINDSWEPT LAND AND LIVESTOCK
9 COMPANY

10 By: _____

11 ATTEST:

12 _____
13 Secretary

14 (I:\Sac River Drafts\04-03-03 Windswept Land and Livestock Company Final Draft Contract
15 with exhibits.doc)

Exhibit A

Windswept Land and Livestock Company
Sacramento River

SCHEDULE OF MONTHLY DIVERSIONS OF WATER

	<u>Base Supply</u> (acre-feet)	<u>Project Water</u> (acre-feet)	<u>Contract Supply</u> (acre-feet)
April	<u>220</u>	<u>0</u>	<u>220</u>
May	<u>690</u>	<u>0</u>	<u>690</u>
June	<u>720</u>	<u>0</u>	<u>720</u>
July	<u>730</u>	<u>0</u>	<u>730</u>
August	<u>740</u>	<u>0</u>	<u>740</u>
September	<u>880</u>	<u>0</u>	<u>880</u>
October	<u>60</u>	<u>0</u>	<u>60</u>
Total	<u>4040</u>	<u>0</u>	<u>4,040</u>

Points of Diversion: 44.2L, 45.6L, 46.45L

Dated:

Exhibit B

(Map to be inserted to identify area covered by contract)

Windswept Land and Livestock Company
Sacramento River

Exhibit C

Windswept Land and Livestock Company
Sacramento River

UNIT DUTY

(In Acre-Feet Per Acre)

	<u>Rice</u>	<u>Alfalfa and Irrigated Pasture</u>	<u>General Crops</u>
June	1.90	0.80	0.60
July	2.10	1.00	0.70
August	2.00	0.80	0.70
September	0.50	0.60	0.40

Dated:

Exhibit D

Windswept Land and Livestock Company
 Sacramento River

WATER RATES AND CHARGES

Note: Rates and Charges shown are 2003 rates. This exhibit will be updated prior to execution of the contract to reflect the Rates and Charges for 2004.

COST OF SERVICE RATES:	<u>Per Acre-Foot</u>
* Rates are not available as Project Water is not included in Contract Total	
Capital Rates	
Storage	\$0.00*
O&M Rates:	
Water Marketing	\$0.00*
Storage	\$0.00*
Deficit Rates:	
Interest Bearing	\$0.00*
CFO/PFR Adjustment Rate 1/	\$0.00*
TOTAL	\$0.00*

FULL-COST RATES:

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981. \$0.00*

Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981. \$0.00*

CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 2/

Restoration Payments (3407(d)(2)(A)) \$7.69

1/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.

2/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1 - 9/30).